

# Notice of Allowability

Application No.

09/923,181

Examiner

Michael C. Astorino

Applicant(s)

TELLER ET AL.

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## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 9/26/2006.
2. ☒ The allowed claim(s) is/are 1-31,33-95,97-148,150 and 151.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

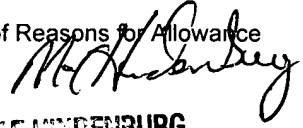
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date 4/2006
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material

5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

  
MARK WENDENBURG  
SENIOR PATENT EXAMINER  
TECHNOLOGY CENTER 6700

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The pending claims including independent claims 1, 33, 65, and 97 are allowable. Pursuant to the procedures set forth in MPEP § 821.04(B), claims previously withdrawn from consideration as a result of a restriction requirement are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, **the restriction requirement as set forth in the Office action mailed on 10/23/2002 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

#### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

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Authorization for this examiner's amendment was given in a telephone interview with John Monocello on September 30, 2006.

The application has been amended as follows:

**Specification:**

Replace the first line of the specification from "This application is a continuation-in-part of U.S. application Ser. No. 09/602,537, filed on Jun. 23, 2000, which is a continuation-in-part of U.S. application Ser. No. 09/595,660, filed on Jun. 16, 2000." To "This application is a continuation-in-part of U.S. application Ser. No. 09/602,537, filed on Jun. 23, 2000, now US Patent Number 6,605,038, which is a continuation-in-part of U.S. application Ser. No. 09/595,660, filed on Jun. 16, 2000."

**Claims:**

10. An apparatus according to claim 9, said manually entered information being stored in ~~said a~~ a memory.

13. An apparatus according to claim 12, said manually input information being stored in ~~said a~~ a memory.

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21. An apparatus according to claim 20, ~~said location wherein an~~ indication of a location of said apparatus within a defined space causes ~~causing~~ said computing device to trigger an event.

23. An apparatus according to claim 20, ~~said location wherein an~~ indication of a location of said apparatus causes ~~causing~~ said computing device to trigger an event if said apparatus detects one or more physiological conditions of said individual.

24. An apparatus according to claim 9, said apparatus monitoring the degree to which said individual has followed a predetermined routine, said analytical status data comprising feedback to said individual relating to the degree to which said individual has followed said predetermined routine, said feedback being generated from at least a portion of at least one of said data ~~indicative of a first parameter, said data of a second parameter, one or more physiological parameters of said individual,~~ said derived data, and said manually entered data.

25. An apparatus according to claim 12, said apparatus monitoring the degree to which said individual has followed a predetermined routine, said analytical status data comprising feedback to said individual relating to the degree to which said individual has followed said predetermined routine, said feedback being generated from at least a portion of at least one of said data ~~indicative of one or more physiological parameters of said individual~~ of a first parameter, said data of a second parameter, said derived data and said manually input data.

46. An apparatus according to claim 45, said manually entered information being stored in ~~said~~ a memory.

47. An apparatus according to claim 45, ~~said~~ wherein analytical status data ~~being~~ is generated from at least a portion of said manually entered information.

49. An apparatus according to claim 48, said manually input information being stored in ~~said~~ a memory.

50. An apparatus according to claim 48, ~~said~~ wherein analytical status data ~~being~~ is generated from at least a portion of said manually input information.

53. An apparatus according to claim 52, ~~said~~ wherein an indication of a location of said apparatus within a defined space ~~indication causing~~ causes said second computing device to trigger an event.

55. An apparatus according to claim 52, ~~said~~ wherein an location-indication of a location of said apparatus within a defined space ~~causing~~ causes said second computing device to trigger an event if said apparatus detects one or more physiological conditions of said individual.

56. An apparatus according to claim 45, said apparatus monitoring the degree to which said individual has followed a predetermined routine, wherein said analytical status data comprising feedback to said individual relating to the degree to which said individual has followed said predetermined routine is generated, said feedback being generated from at least a portion of at least one of said data ~~indicative of one or more physiological parameters of said individual~~ of a first parameter, said data of a second parameter, said derived data and said manually entered data.

57. An apparatus according to claim 48, said apparatus monitoring the degree to which said individual has followed a predetermined routine, ~~said~~ wherein analytical status data comprising feedback to said individual relating to the degree to which said individual has followed said predetermined routine is generated, said feedback being generated from at least a portion of at least one of said data ~~indicative of one or more physiological parameters of said individual~~ of a first parameter, said data of a second parameter, said derived data and said manually input data.

78. An apparatus according to claim 77, said manually entered information being stored in ~~said~~ a memory.

81. An apparatus according to claim 80, said manually input information being stored in ~~said~~ a memory.

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85. An apparatus according to claim 84, ~~said wherein an location~~ indication of a location of said apparatus within a defined space causes ~~causing~~ said second computing device to trigger an event.

87. An apparatus according to claim 84, ~~said location wherein an~~ indication of a location of said apparatus within a defined space causes ~~causing~~ said second computing device to trigger an event if said apparatus detects one or more physiological conditions of said individual.

88. An apparatus according to claim 77, said apparatus monitoring the degree to which said individual has followed a predetermined routine, said analytical status data comprising feedback to said individual relating to the degree to which said individual has followed said predetermined routine, said feedback being generated from at least a portion of at least one of said data ~~indicative of one or more physiological parameters of said individual~~ a first parameter, said data of a second parameter, said derived data and said manually entered data.

89. An apparatus according to claim 80, said apparatus monitoring the degree to which said individual has followed a predetermined routine, said analytical status data comprising feedback to said individual relating to the degree to which said individual has followed said predetermined routine, said feedback being generated from at least a portion of at least one of said data ~~indicative of one or more~~

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~~physiological parameters~~ a first parameter, said data of a second parameter of said individual, said derived data and said manually input data.

111. An apparatus according to claim 109, ~~said wherein~~ analytical status data ~~being is~~ generated from at least a portion of said manually entered information.

114. An apparatus according to claim 112, ~~said wherein~~ analytical status data ~~being is~~ generated from at least a portion of said manually input information.

117. An apparatus according to claim 116, ~~said location~~ wherein an indication of a location of said apparatus within a defined space causes ~~causing~~ said second computing device to trigger an event.

118. An apparatus according to claim 117, said event being based on one or more physiological conditions of said individual detected by said apparatus.

119. An apparatus according to claim 117, ~~said location~~ wherein the indication of the location of said apparatus within a defined space causes ~~causing~~ said second computing device to trigger an event if said apparatus detects one or more physiological conditions of said individual.

120. An apparatus according to claim 109, said apparatus monitoring the degree to which said individual has followed a predetermined routine, ~~said wherein~~



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analytical status data comprising feedback to said individual relating to the degree to which said individual has followed said predetermined routine is generated, said feedback being generated from at least a portion of at least one of said data ~~indicative of one or more physiological parameters of said individual~~ a first parameter, said data of a second parameter, said derived data and said manually entered data.

121. An apparatus according to claim 112, said apparatus monitoring the degree to which said individual has followed a predetermined routine, ~~said wherein~~ analytical status data comprising feedback to said individual relating to the degree to which said individual has followed said predetermined routine is generated, said feedback being generated from at least a portion of at least one of said data ~~indicative of one or more physiological parameters of said individual~~ of a first parameter, said data of a second parameter, said derived data and said manually input data.

130. An apparatus according to claim 129, ~~said location wherein an~~ indication of geographic location causes ~~causing~~ said computing device to trigger an event.

132. An apparatus according to claim 131, ~~said location wherein an~~ indication of geographic location causes ~~causing~~ said second computing device to trigger an event.

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133. An apparatus according to claim 65, said apparatus further comprising a location sensing device for indicating to a second computing device a geographic location of said apparatus.

134. An apparatus according to claim 133, ~~said location wherein an~~ indication of geographic location causes ~~causing~~ said second computing device to trigger an event.

135. An apparatus according to claim 97, said apparatus further comprising a location sensing device for indicating to a second computing device a geographic location of said apparatus.

136. An apparatus according to claim 135, ~~said location wherein an~~ indication of geographic location causes ~~causing~~ said second computing device to trigger an event.

141. An apparatus according to claim 1, said apparatus being adapted to receive information from a ~~first computing device~~ said processor and cause a ~~second~~ computing device to trigger an event based on said received information.

142. An apparatus according to claim 33, said apparatus being adapted to ~~receive~~ communicate information from at least one of said computing device and said

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processor ~~a second computing device~~ and cause a ~~third second~~ computing device to trigger an event based on said received information.

143. An apparatus according to claim 65, said apparatus being adapted to receive information from ~~a second~~said computing device and cause a ~~third second~~ computing device to trigger an event based on said received information.

144. An apparatus according to claim 97, said apparatus being adapted to receive information from ~~a second~~said computing device and cause a ~~third second~~ computing device to trigger an event based on said received information.

145. An apparatus according to claim 1, further comprising a wireless communication component for transmitting at least one of said data ~~indicative of physiological parameters~~a first parameter, said data of a second parameter, said derived data and said analytical status data to an electronic media device, said electronic media device including electronic media, the transmitted at least one of said data ~~indicative of physiological parameters~~a first parameter, said data of a second parameter, said derived data and said analytical status data being used to adjust one or more characteristics of said electronic media.

146. An apparatus according to claim 33, further comprising a wireless communication component for transmitting at least one of said data ~~indicative of physiological parameters~~a first parameter, said data of a second parameter, said

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derived data ~~and said analytical status data~~ to an electronic media device, said electronic media device including electronic media, the transmitted at least one of said data ~~indicative of physiological parameters~~ a first parameter, said data of a second parameter, said derived data ~~and said analytical status data~~ being used to adjust one or more characteristics of said electronic media.

147. An apparatus according to claim 65, further comprising a wireless communication component for transmitting at least one of said data ~~indicative of physiological parameters~~ a first parameter, said data of a second parameter, said derived data and said analytical status data to an electronic media device, said electronic media device including electronic media, the transmitted at least one of said data ~~indicative of physiological parameters~~ of a first parameter, said data of a second parameter, said derived data and said analytical status data being used to adjust one or more characteristics of said electronic media.

148. An apparatus according to claim 97, further comprising a wireless communication component for transmitting at least one of said data ~~indicative of physiological parameters~~ a first parameter, said data of a second parameter, said derived data ~~and said analytical status data~~ to an electronic media device, said electronic media device including electronic media, the transmitted at least one of said data ~~indicative of physiological parameters~~ a first parameter, said data indicative of a second parameter, said derived data ~~and said analytical status data~~ being used to adjust one or more characteristics of said electronic media.

**Cancel claim 149.**

150. An apparatus according to claim 97, said apparatus monitoring the degree to which said individual has achieved one or more nutritional goals, ~~said-wherein~~ analytical status data comprising feedback to said individual relating to the degree to which said individual has achieved said one or more nutritional goals is generated, said feedback being generated from at least a portion of said nutritional information.

**REASONS FOR ALLOWANCE**

The following is an examiner's statement of reasons for allowance: the prior art of record does not disclose or teach an apparatus as claimed in independent claims 1, 33, 65 and 97. Specifically, the prior art does not disclose all of the claimed elements along with a third parameter comprising caloric expenditure data, said third parameter derived from a first and second parameter of said individual, wherein the first and second parameters are produced by at least one of said individual's body and the environment adjacent said individual's body. "First and second parameters produced by at least one of said individual's body and the environment adjacent said individual's body" is understood to include the parameters disclosed in Table 1 of the specification and page 16, lines 1-5 of the specification, so long as data of said parameters is not manually entered, or otherwise keyed in.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Astorino whose telephone number is 571-272-4723. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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September 30, 2006

  
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